

Why David Norgove is right on Father's Rights

The final report published by the Family Justice Review has received a mixed response this week, with some complaining (as we do) about the narrowness of the report itself in relation to what it was designed to examine and others feeling up-beat about the solutions being offered in a system where “Individuals and organisations across different parts of the family justice system too often do not trust each other” and where the existence of a system itself is being questioned, with the Review’s startling admission that, “family justice does not operate as a coherent, managed system. In fact, in many ways, it is not a system at all”.

Yet the most intense reaction has come from fathers, who feel that the Family Justice Committee’s refusal to add legislation that would create a presumption of shared parenting is both unfair and an indication of the system’s lack of willing to acknowledge fathers. But this view has in no small way been affected by fundamental misunderstandings about the Committee’s perception of fathers and is not a true reflection of what the Review itself intends.

Fathers who have formed pressure groups are demanding what they are calling a right to equal access to their children, but as the law stands today, there are no presumptions in favour of fathers or mothers in the family justice system, only perceived biases (which exist, but vary wildly in type from one local authority and court room to another and are not just specific to mothers). Now flip the switch; if you talk to mothers going through the family court process, many of them complain that they are also ignored, marginalised by magistrates and methods of practice that seem to make everyone feel invisible, except the lawyers – it is not just fathers who feel let down by the family courts. Yet it is all too easy to imagine that they are an isolated and victimised demographic when we read sensational headlines like “Dads should NOT be given right to equal access to children, says review”. That one’s courtesy of the ever-punctilious newspaper, The Mirror.

In the stampede to sensationalise, the voice of the child is once more being drowned out by misunderstandings and media scare-mongering. We tend to forget that the law provides us with an elegant framework which should ensure that every child can be with their parents, notwithstanding any significant problems a mother or father may have which may prevent them from being able to care for their little ones. It is too easy to blame the law and say that it has failed families in Britain; the Children Act 1989 is a ground breaking attempt at placing the welfare of the child at the centre of every decision made within the family courts and although it is not perfect, within a working system could easily deliver justice. The fact that the system fails to deliver on that promise is less about the law and more about the lethargy that has seeped in and allowed the current culture of the courts to ruin any potential the law ever had to protect the most vulnerable members of the family unit: usually our children.

Bearing in mind that the system’s culture and lack of awareness are the real problems plaguing it, we should perhaps ask ourselves whether placing yet another label, in this case a presumption of shared parenting, will really heal the rifts inside the system or whether it will become yet another obstacle to justice. Imagine a family divided by domestic violence, where a presumption of shared parenting exists. Factor in the reality of the huge delays inside the system and the ever decreasing availability of legal aid and the new barriers to defining domestic violence proposed in the Legal Aid Bill and we could find ourselves in a world where more tragic deaths of vulnerable family members take place.

And yet, it seems as if the cries of these fathers and the clamours of various organisations like the Centre for Social Justice are misplaced, as they decry what they feel is a lack of attention to the issue of contact surrounding grandparents as well as dads. It would appear that neither group have taken the time to read the two hundred and twenty eight pages of the Review carefully, for if they had, they would have noticed the very explicit paragraphs which embrace fathers and fatherhood in general. And Grandparents too.

The Review makes a distinct effort to involve fathers; on page 22 of the Review, it calls for the creation and use of child arrangement orders, a type of order which would remove the inelegant and inflammatory use of words like contact and residence so that more care can go towards ensuring that arrangements for children are complete and properly detailed. And there is an effort to do away entirely with the barrier that awkward legislation on parental responsibility regarding fathers currently creates, by making the child arrangement order available to fathers without parental responsibility (and those with) and to wider members of the family, like grandparents.

The final report also looks to include fathers, but chooses to do so not through legislation, but through policy and wider channels, like education. We agree strongly with the Committee when they say, “any legislation that might risk creating an impression of a parental ‘right’ to any particular amount of time with a child would undermine the central principle of the Children Act 1989 that the welfare of the child is paramount”. Indeed, the issue of parental rights is misguided, for whilst we as parents should certainly have more say over the upbringing of our children than the state, our roles revolve around duties and responsibilities. Throwing rights into the mix simply muddies the water; child welfare has never been about parental authority.

If the Children Act 1989 was allowed to function in an efficient system, there would be no need to talk about fathers’ rights or mothers’ intuition because the welfare of the child principle would ensure that fathers and mothers who are able and loving could be with their children. It is a logical follow on from a principle which at its heart, wants to incorporate the best of all possible worlds to make sure that children have the greatest possible support as they grow up.

The Family Justice Review has understood that the law is not at fault. It seeks instead to “focus.... on supporting and fostering a greater awareness of shared parental responsibility and on the duties and roles of both parents from birth onwards. Legislation is not the means through which to achieve this. As one legal adviser, responding to the online consultation put it: *‘education, not legislation.’*”. We don’t often agree with lawyers, but on this point, we feel very strongly that the anonymous legal adviser makes perhaps the most important point of all. The entire system needs to be educated; it needs to re-learn how to communicate with families, to understand the human condition and to rediscover its passion for helping people at a time in their lives when they need it most.

Mums and dads should also consider setting their grievances aside and think about working together; not just in divorce but in helping to develop a family justice system that we can be proud of. There has never been a better time to collaborate.